

APPEAL NO. 93418

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on April 14, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) failed to establish that he suffered an injury that arose out of and in the course and scope of his employment. Claimant disagrees with several findings that go to his failure to establish that his medical problems are causally connected to his employment, and states that he is dissatisfied with the decision. An untimely response received from the respondent (carrier) will not be considered. The response is dated June 14, 1993 and the decision of the hearing officer is stated as having been received on May 27, 1993. This is beyond the 15 day requirement set forth in Article 8308-6.41(a).

DECISION

Finding that the evidence is sufficient to support the hearing officer's decision, we affirm.

The claimant worked as a truck driver hauling chemical products. He testified that beginning about December 4, 1991, (he started working with the employer in August 1991), he smelled an unusual odor in the truck he was driving. He could not identify the odor but stated that he continued to smell the odor over the next couple of months, even at home, and that he experienced a diminished sense of taste and smell, he was nauseous, had headaches and sinusitis and also experienced back pain. Even though he has not worked for the employer since March 10, 1992, he continues to experience these problems. Claimant testified that he has seen his family doctor, a neurologist, and a sports medicine doctor and that none of them have related his medical problem to job exposure to chemicals. No medical reports were in evidence.

The employer's former operations manager testified that as a result of the claimant's complaint about the odor in his truck, three different trucks were assigned to the claimant over a period of time and all the trucks were washed down and were inspected. The claimant continued to smell an odor even though others could not. Because claimant speculated that someone might be sabotaging his truck, new locks were put on his truck and even when he was assigned a different truck without notice, he smelled the odor. Inspections of the trucks did not uncover any unusual odor or malfunction.

As we observed in Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992, the effects of "noxious" fumes on the body and the causal connection between an injury assertedly caused by such fumes and the employment may involve technical or scientific issues which require some degree of expertise in making the necessary connection. This case appears to fall in that category. Given the circumstances that no particular fume or odor has been identified, that nothing has been discovered causing the odor or fumes giving rise to the claimant's asserted medical

problems, and that regardless of actions taken to alleviate the alleged problem the claimant's condition persisted and continues to persist some year and a half later and long after he stopped working for the employer, something more than common experience or common sense is needed to make the necessary link. The probability of causation articulated by scientific or medical experts is needed to show that the claimed injury is employment related.

See generally Parker v. Employer Mutual Insurance

Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969). Without evidence to establish this vital link, the claimant has not met his burden of proof by a preponderance of the evidence.

Appeal 92187, *supra*. Clearly, the hearing officer's determination is not against the great

weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986);

Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

Finding her decision sufficiently supported by the evidence, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge